

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 322 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHARTIBEN DEEPAKKUMAR VYAS

Versus

DEPAKKUMAR JAIKRISHNABHAI VAYS

Appearance:

HL PATEL ADVOCATES for Petitioner
MR AB MUNSHI for Respondent No. 1
MR SR DIVETIA APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 25/06/98

ORAL JUDGEMENT

Heard Mr. Asim Pandya, learned advocate appearing for H.L.Patel Advocates, Mr. A.B.Munshi for respondent No. and Mr. S.R.Divetia, the learned APP.

This petition arises of the maintenance proceedings under section 125 of the Code of Criminal

Procedure initiated by the present petitioner. The petitioner lodged Criminal Misc. Application No.131/96 in the court of the learned JMFC, Khambhat. It was the claim of the petitioner that she had married respondent no.1 on 11th April, 1996 and had stayed with him till 28th May, 1996. On 28th May, 1996, the respondent no.1 drew her out of the house. She, therefore, claimed maintenance from the respondent no.1. The claim made by the petitioner was contested by the respondent no.1. The respondent no.1 alleged that earlier the respondent no.1 had agreed to marry the petitioner and had paid a sum of Rs.10,000/- to the mother of the petitioner. He also signed an application for registration of marriage. However, thereafter the mother of the petitioner demanded a further sum of Rs. 15,000/- which the respondent no.1 refused to pay. The talks of marriage fell through and the marriage between the petitioner and the respondent no.1 was not solemnised. Since the petitioner had never married the respondent no.1, the respondent no.1 denied his obligation to maintain her.

The learned trial Judge under his judgment and order dated 3rd July, 1997 held that the petitioner was lawfully married to the respondent no.1. The respondent no.1 was, therefore, liable to maintain her. He, therefore, directed the respondent no.1 to pay monthly maintenance of Rs.300/- to the petitioner. Feeling aggrieved, the petitioner preferred Criminal Revision Application No. 101/97 before the learned Additional Sessions Judge, Nadiad. The learned Additional Sessions Judge, under his judgment and order dated 7th February, 1998, did not believe the factum of the petitioner's marriage to the respondent no.1. He, therefore, allowed the Revision Application and set aside the order made by the learned trial Judge. Feeling aggrieved, the petitioner has preferred the present petition.

It is the case of the petitioner that she was married to respondent no.1 on 11th April, 1996 and stayed with him at his residence upto 28th May, 1996. However, though the factum of marriage is disputed by the respondent no.1 and the marriage is alleged to have been solemnised according to Hindu rites, the petitioner has not examined any independent witness to establish the factum of her marriage to respondent no.1. No independent witness has been examined to establish the fact that the petitioner resided with the respondent no.1 at his residence from 11th April, 1996 to 28th May, 1996. Except the marriage certificate which was obtained on 31st May, 1996 (i.e. after the petitioner was alleged to have been driven out of the house of the respondent no.1)

no other evidence is brought on the record to establish the petitioner's marriage to the respondent no.1 or to establish that the petitioner stayed with the respondent no.1 for more than a month as alleged. It is not denied that the respondent no.1 had paid a sum of Rs.10,000/- as averred by the respondent no.1. Under the circumstances, the learned Sessions Judge can not be said to have erred in holding that the petitioner's marriage to respondent no.1 was not proved. No other contention has been raised before me. I, therefore, do not find any reason to interfere with the impugned order of the learned Sessions Judge.

Petition is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.

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JOSHI